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Mohamed Sam bin Sailan v Sykt Asal Contruction Sdn Bhd

HIGH COURT (JOHOR BAHRU) — WRIT SUMMONS NO 22NCVC-5–01 OF 2013
TEO SAY ENG JC
20 DECEMBER 2013

Evidence — Presumption — Adverse inference — Failure to call material witness — Witness's condition deteriorated and speech hardly intelligible — Whether adverse inference could be drawn — Whether former company director's name fraudulently continued to be used by company to secure contracts — Forgery of signature — Whether proved beyond reasonable doubt — Whether claim for damages allowed — Evidence Act 1950 s 114(g)

The plaintiff, the previous director of the defendant company had resigned from the said post due to parkinson's disease and had transferred all his shares to one Jasni bin Abdul Majid ('Jasni'). However, about five years later, without his consent and knowledge, the plaintiff discovered that he was re-appointed as a director of the defendant company and appointed as the sole signatory of the UOB (M) Bhd current account of the defendant company in Malacca. It was also discovered that he had become a shareholder of the defendant company again vide four separate Forms 32A which was alleged to have contained his forged signatures. The plaintiff alleged that the defendant company was making use of his name to procure three projects which were said to be worth RM146,620,000. Hence, the plaintiff claimed for 37% of the purported profits from the three said projects and injunctive relief to stop his name from being used by the defendant company.

Held, dismissing the claim with costs of RM15,000:

(1) The plaintiff failed to prove, beyond reasonable doubt, that the defendant company had defrauded the plaintiff by forging his signatures in the alleged documents tendered in court and had used his name to procure the said three projects. The plaintiff failed to adduce any cogent evidence to prove that the defendant had utilised his name to secure the said three projects while the defendant adduced convincing evidence that the first two projects were procured without the need to use the plaintiff's name to gain the bumiputera status of 51% and the last project which was procured was not a government project (see paras 65 & 83).

(2) The founder member of the defendant company and a very close family friend of the plaintiff, was a material witness who could shed light on the various issues raised before the court. Unfortunately, LKM was certified by a psychiatrist to be not fit to be a witness in court because LKM was

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diagnosed with alzheimer's disease and his condition gradually deteriorated and his speech was hardly intelligible. In the circumstances, no adverse inference ought to be drawn against the defendant company for not calling LKM as its witness (see paras 79, 80 & 82).

(3) Since the plaintiff disagreed that he was a shareholder, he could not claim for 37% of the profit in the form of dividends made by the defendant. Further, the plaintiff could not claim for any damages since there was no proof of any losses or damage suffered by him (see para 91).

[Bahasa Malaysia summary

Plaintif, pengarah terdahulu defendan telah meletakkan jawatan daripada jawatan tersebut akibat penyakit parkinson dan telah memindahkan kesemua sahamnya kepada seorang yang bernama Jasni bin Abdul Majid ('Jasni'). Walau bagaimanapun, lebih kurang lima tahun kemudian, tanpa izin dan pengetahuannya, plaintif mendapati yang dia dilantik semula sebagai pengarah defendan dan dilantik sebagai penandatangan tunggal UOB (M) Bhd akaun semasa defendan di Melaka. Ia juga didapati yang dia sekali lagi menjadi pemegang saham defendan melalui empat Borang 32A berasingan yang didakwa mengandungi tandatangan palsunya. Plaintif mendakwa bahawa defendan menggunakan namanya untuk mendapatkan tiga projek yang mana dikatakan bernilai RM146,620,000. Maka, plaintif menuntut 37% daripada keuntungan yang dimaksudkan tersebut daripada ketiga-tiga projek tersebut dan relief injunktif untuk menghentikan namanya daripada digunakan oleh defendan.

Diputuskan, menolak tuntutan dengan kos sebanyak RM15,000:

(1) Plaintif gagal untuk membuktikan, melampaui keraguan yang munasabah, bahawa defendan telah menipu plaintif dengan memalsukan tandatangannya di dalam dokumen-dokumen yang didakwa yang diserahkan di mahkamah dan menggunakan namanya untuk mendapatkan ketiga-tiga projek tersebut. Plaintif gagal untuk mengemukakan apa-apa keterangan yang menyakinkan untuk membuktikan bahawa defendan telah menggunakan namanya untuk memperolehi ketiga-tiga projek tersebut sementara defendan mengemukakan keterangan yang meyakinkan bahawa kedua-dua projek pertama diperolehi tanpa menggunakan nama plaintif untuk mendapatkan status bumiputera sebanyak 51% dan projek terakhir yang diperolehi bukan projek kerajaan (lihat perenggan 65 & 83).

(2) Pengasas defendan dan rakan keluarga plaintif yang sangat rapat, adalah saksi material yang dapat memberikan penerangan mengenai pelbagai isu yang berbangkit di hadapan mahkamah. Malangnya, LKM disahkan oleh pakar psikiatri tidak layak untuk menjadi saksi di mahkamah kerana LKM disahkan menghidap penyakit alzheimer dan keadaannya

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beransur-ansur merosot dan percakapannya hampir tidak difahami. Dalam keadaan ini, tiada inferens bertentangan patut dibangkitkan terhadap defendan kerana tidak memanggil LKM sebagai saksi (lihat perenggan 79, 80 & 82).

(3) Memandangkan plaintif tidak bersetuju bahawa dia adalah pemegang saham, dia tidak dapat menuntut keuntungan sebanyak 37% dalam bentuk dividen yang dibuat oleh defendan. Selanjutnya, plaintif tidak dapat menuntut untuk apa-apa ganti rugi memandangkan tidak terdapat bukti mengenai apa-apa kerugian yang dialami olehnya (lihat perenggan 91).[a0]]

Notes

For a case on adverse inference, see 7(2) *Mallal's Digest* (4th Ed, 2013 Reissue) para 2416.

Cases referred to

Asean Securities Paper Mills Sdn Bhd v CGU Insurance Bhd [2007] 2 MLJ 301, FC (refd)

Deepak Jaikishan a/l Jaikishhan Rewachand & Anor v Infrared Sdn Bhd (previously known as Reetaj City Centre Sdn Bhd and formerly known as KFH Reetaj Sdn Bhd) & Anor [2013] 7 MLJ 437, HC (refd)

Ho Fok v Ann Bee (M) Sdn Bhd [2002] 5 MLJ 331, HC (refd)

RHB Bank Bhd v Yap Ping Kon & Anor [2007] 2 MLJ 65, HC (refd)

Tong Eng Sdn Bhd (Loh Loon Keng, Petitioner), Re [1994] 1 MLJ 451, HC (refd)

Yong Tim v Hoo Kok Chong & Anor [2005] 3 CLJ 229, FC (refd)

Legislation referred to

Companies Act 1965 Forms 32A, 39, 48A, 49
Evidence Act 1950 s 114(g)
Rules of Court 2012 O 18 r 12(1)

L Parthiban (Shobana with him) (L Parthiban, Zulkiflee & Assoc) for the plaintiff.
Justin Voon (Amy Law with him) (ST Law Shamini) for the defendant.

Teo Say Eng JC:

THE PLAINTIFF'S CASE

[1] The plaintiff in this case is Mohamed Sam bin Sailan who was previously a director of the defendant company and the plaintiff had on 31 December 2006 resigned as the director of the defendant company due to parkinson disease. He was also formerly holding substantial shares in the defendant

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company which he had relinquished upon the transfer of all his shares to Jasni bin Abdul Majid on 13 January 2007.

[2] The plaintiff discovered that the defendant company had been using the plaintiff's name and his signature without the plaintiff's consent and permission somewhere in April 2012, when the plaintiff's daughter Rozaida bt Mohamad Sam Sailan ('PW2') after perusing the plaintiff's income tax assessment had discovered that one of the ledgers of annual income assessment shows that the company which was the defendant company, with the Employer's No E 00094999210, had been contributing to the plaintiff's PCB (*potongan cukai berjadual*). The employer's number belonged to the defendant company, as such the plaintiff was shocked and surprised and did not know why the defendant company would contribute to the plaintiff's PCB whereas the plaintiff had tendered his resignation on 31 December 2006 and was no more the director of the defendant company.

[3] The plaintiff had then written to the defendant company's secretary and requested several documents and upon perusing all the documents, the plaintiff found that he was allegedly re-appointed as director of the defendant company on 10 October 2007 without his consent and permission. The plaintiff also discovered that his signatures had been forged by someone in the defendant company without his knowledge and permission after perusing all the copies of Form 32A, 48A, 49, companies annual return and various directors' resolutions which were received from the defendant company's secretary. The plaintiff also discovered that he had been allegedly appointed as the sole signatory of the UOB (M) Bhd current account in Malacca without his consent and knowledge. The plaintiff was very shocked on the facts that he had been appointed as the sole signatory of the UOB current account as there would also be liabilities attached to the plaintiff.

[4] The plaintiff submits that the defendant company had committed misrepresentation and forgery wherein the defendant company had wrongly issued the letter of reappointment of the plaintiff as a director of the defendant company without the plaintiff's consent and knowledge. All this alleged appointment was conceived by the defendant company to mislead the government and other various authorities to maintain the defendant company's status quo as bumiputra class A contractor and also G7 contractor with the Construction Industry Development Board ('the CIDB'). The defendant company, had also wrongly used the plaintiff's name and his signature to enjoy various benefits from various authorities by using the plaintiff's name as the director and shareholder of the defendant company to obtain government projects.

[5] The plaintiff is now claiming as injunction to stop the defendant

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company from using his good name and signature and was also claiming the damages and compensation from the defendant company for all the defendant company's unlawful, illegal acts and misconducts in the use of the plaintiff's signature and name to mislead and misrepresent to the various authorities.

THE DEFENDANT'S CASE

[6] The plaintiff is a close friend of LKM, the founder of the defendant company ('LKM'). The plaintiff was invited by LKM, to join the defendant company as a director in 1983. Their relationship was very close. They were the only parties making decision for all the business transactions of the defendant company.

[7] LKM was the frontliner who managed the internal affairs of the defendant company and all business transactions with all parties. LKM had ceased all the business transactions of the defendant company due to his illness. All the business transactions were then taken over by his son Shawn Lee ('DW2') and the other directors of the defendant company.

[8] Since Shawn Lee only became a director on 23 May 2012, he had no personal knowledge of all the business transactions which had taken place before his involvement in the defendant company in May 2012 because the said business transactions were conducted by LKM.

[9] On 12 May 2012, the plaintiff had attended a meeting with Shawn Lee and had raised some allegations with regard to some misconducts of the defendant company during the said meeting which were not the purpose for which the meeting was held. After receiving the said complaints, the defendant company had carried out some investigation. The result of the investigation carried out by the defendant company shows no proof of any irregularity or any forgery of signatures in the defendant's records as alleged by the plaintiff. In fact the defendant company found that the plaintiff's signatures in the defendant's record from the time he first became a director to the time of the alleged forgeries after his resignation were without any difference.

[10] The plaintiff had instructed his solicitor vide a letter dated 30 May 2012 to request the defendant company to remove the plaintiff's name as a director from the board of directors which the defendant company had complied without admission of liability.

[11] The defendant had denied all these allegations made by the plaintiff against the defendant company and had stated that:

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(a) the defendant company never and did not have the capacity to forge the plaintiff's signature;

(b) the defendant company had, at all the material times conducted all the business transactions or projects by using the name of the defendant company;

(c) the defendant company did not need to use the plaintiff's name as there were other bumiputra directors and shareholders in the defendant company at all the material times;

(d) the defendant company did not at any time commit any wrong in contrary to the law;

(e) all the construction projects were obtained by the defendant company through its good reputation in the construction industry but not by using the plaintiff's name; and

(f) at the material times the defendant company had been enjoying the status of class A contractor by obtaining *sijil perolehan kerja kerajaan* from CIDM on its own merits.

[12] Since the plaintiff himself disclaimed as a director cum shareholder of the defendant company he was therefore not entitled to 37% marginal profits obtained by the defendant company.

[13] Even if the allegation of fraud did exist, the plaintiff was still not entitled to claim any profits from the defendant company since the plaintiff did not suffer any losses in this case.

[14] The plaintiff had no legal basis to seek for any injunctive reliefs or any other reliefs sought for in this case.

[15] The defendant company prays that the plaintiff's claim be dismissed with costs.

ISSUES FOR DETERMINATION AND RULINGS OF THE COURT

[16] The plaintiff's case in a nutshell is that he resigned from the post of director of the defendant company on or about 31 December 2006 and had transferred all his shares to Jasni bin Abdul Majid on 13 January 2006 due to parkinson disease.

[17] About five years later the plaintiff discovered that he was re-appointed as a director of the defendant company on 10 October 2007 vide a Form 48A of the Companies Act Statutory Declaration that appears to be affirmed by the

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plaintiff before a commission for oaths (exh P3) and appointed as the sole signatory of the UOB (M) Bhd current account of the defendant company in Malacca without his consent and knowledge.

[18] He became a shareholder of the defendant company again vide four separate 32A of the Companies Act (Form of Transfer of Securities) (exh P4 (a–d)) which the plaintiff claims contained his forged signatures.

[19] The defendant company was then making use of his name to procure three projects which were said to be worth RM146,620,000 and the plaintiff was claiming for 37% of the purported profits from the three said projects.

What is the basis of the plaintiff's claim

[20] A perusal of the plaintiff's claim clearly shows that it is not grounded on misrepresentation but on forgery and fraud. The plaintiff must prove that the defendant company had defrauded him by purportedly forging his signatures in the several documents tendered and exhibited in court. It is trite law that the plaintiff is bound by his own pleadings.

Whether the plaintiff's pleading is defective

[21] The defendant submits that the plaintiff's statement of claim does not provide proper particulars of purported fraud or forgery or cheating and how such fraud had caused any 'damage' to him. It is trite law that the fraud must be particularised (O 18 r 12(1) of the ROC 2012). The defendant further submits that the plaintiff had resorted to add more allegations in the statement of reply which is prejudicial to the defendant company as the defendant company had no opportunity to file a defence to those new allegations inserted in the reply.

[22] I find that the allegation by the defendant that the plaintiff's statement of claim is defective for the reason that it is not substantiated by particulars of fraud is without merit simply because a perusal of the statement of claim clearly shows the particulars of fraud have been pleaded in para 14 of the statement of claim.

[23] On the issue of the new allegations raised in the plaintiff's statement of reply, I am of the view that whatever allegations raised by the plaintiff in his statement of reply are still subject to proof which to me will not prejudice the defendant.

The burden of proof

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[24] I find that the plaintiff's case is in essence premised on fraud, and the allegations of misrepresentation and forgeries are means of committing the fraud. The plaintiff has the burden to prove that the defendant had defrauded him by purportedly forging his signatures and by making use of his name to procure the three said projects. It is trite law that fraud must be proved beyond reasonable doubt: *Asean Securities Paper Mills Sdn Bhd v CGU Insurance Bhd* [2007] 2 MLJ 301, at p 305 and *Yong Tim v Hoo Kok Chong & Anor* [2005] 3 CLJ 229 (FC).

This will lead us to the main issue for determination, that is, whether the plaintiff has proved beyond reasonable doubt his claim of fraud against the defendant company

Whether the defendant company or anyone from the defendant company had forged the plaintiff's signatures on the alleged documents?

The plaintiff's submission

[25] It is the plaintiff's contention that the purported signatures of the plaintiff's in the Forms 39, 49, 48A and the defendant company's directors' resolutions and all other documents as at 10 October 2007 until todate (exh D13A, p 44 of bundle B) and thereafter are somewhat similar as the plaintiff's signature but in actual fact they are not the plaintiff's signature as the plaintiff did not at any material times signed all the said documents.

[26] The plaintiff had on 31 December 2006 resigned (exh P1, p 6 of bundle B) as the director and shareholder of the defendant company due to his parkinson disease. The plaintiff submits that the plaintiff who is in a wheelchair and who needs a helper and who lives with his daughter in Johor due to the parkinson disease would not involve himself nor travel to Malacca to do all the dealings alleged by the defendant company from the year 2007–2012 over a period of five years.

[27] It is the plaintiff's contention that at the material time after and during his resignation the plaintiff had transferred all the shares to En Jasni bin Abdul Majid on 13 January 2007 (p 2 of bundle B) and as at then onwards the plaintiff was not involved in the defendant's business dealings and affairs.

[28] The plaintiff contends that the defendant company was a class A construction company which was registered with the Construction Industry Development Board (CIDB) holding G7 licence and it is CIDB's salient requirements that to hold G7 licence, the defendant company should adhere to the followings:

(a) at least 51% of the shares are held by bumiputra;

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(b) at least 51% of the board of directors are bumiputra directors;

(c) the finance officer of the company must be a bumiputra; and

(d) the signatory of the cheque must be dominated by bumiputra at least 52% (pp 247–248 of bundle C).

[29] As such, the plaintiff submits that in order to maintain the defendant's bumiputra status, it is very important and crucial for the defendant company to have majority number of bumiputra directors and shareholders. To achieve this purpose, the defendant company had purportedly re-appointed the plaintiff as a director on 10 October 2007 without the plaintiff's consent and knowledge and further someone in the defendant company had been purportedly signing and copying the plaintiff's signature in all relevant documents pertaining to the re-appointment of the plaintiff and subsequently in all the other documents from 10 October 2007 until May 2012 until the discovery of the various misconducts and misrepresentations by the plaintiff and his daughter.

[30] The plaintiff submits that the plaintiff and LKM were best friends and they had known each other for a very long period of time. It was LKM who invited the plaintiff to join the defendant company as a director and shareholder. LKM before the plaintiff resigned on 31 December 2006 knew all about the plaintiff and the plaintiff's family. The alter ego of the defendant company was LKM who would have in his possession all the details of the plaintiff's signature, identification card number and also the plaintiff's particulars before the plaintiff resigned from the defendant company in 2006. It was LKM who used his special relationship with the plaintiff to carry out this unlawful misconduct against the plaintiff.

[31] The plaintiff contends that after the plaintiff's resignation in 2006, the plaintiff had no contacts and any dealings with the defendant company. It was only in April 2012 it came to the plaintiff's knowledge that the plaintiff had purportedly been paid the director fees and salaries in the defendant company which was discovered by the plaintiff's daughter Puan Rozaida bt Mohamad Sam Sailan (PW2), when she was submitting the plaintiff's income tax assessment for the year 2012. In the *penyata cukai berjadual* ('PCB') of the Inalnd Revenue Board, the defendant company had been contributing to the plaintiff's PCB deductions. In reference to p 5 bundle B the statement printed by Puan Rozaida at the column *pindaan*/no *majikan* is 09499982–10 that is, the employer's number of the defendant company which is the same as in the PCB deduction form for the year 2005 submitted by the defendant company in 2005 for the plaintiff.

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[32] The plaintiff contends that the plaintiff did not receive any director's fees, bonuses or dividends from the defendant company from 10 October 2007 until today which was proven at the trial. However, the defendant had tendered D23A and D23B that is, payment vouchers for director fees for the months of March and April 2012 which purportedly show that the director's fees had been received by the plaintiff and that the plaintiff signed the payment vouchers which were never proven by the defendant that either the plaintiff received these director fees and that he signed the payment vouchers. The plaintiff contends that the fact that from the year 2007, the defendant company had been preparing vouchers to show payment of director fees from the year 2007–2012 was to misrepresent to the Income Tax Department and other authorities that the plaintiff was a director from 2007–2012 earning his director's fees.

[33] The plaintiff contends that during the trial the defendant's witnesses either Mr Shawn Lee ('DW2') or Datuk Fatimah ('DW3') was unable to confirm that they had seen the plaintiff during the period 2007–2012 in the defendant company's premises or any of the board of directors' or shareholders' meetings.

[34] The only time both DW2 and DW3 confirmed to have met the plaintiff was during the meeting on 12 May 2013 after the complaints by the plaintiff with regards to the misconducts committed in the defendant company.

[35] It was only after meeting the plaintiff personally at the plaintiff daughter's house in Kuala Lumpur, the plaintiff was asked to attend to a meeting at the defendant company to discuss the said issues with the directors and the meeting was then fixed on 12 May 2012. However, the plaintiff contends that the defendant had then issued the circular to convene the said meeting on 12 May 2012 as a meeting to discuss the IRB visit which was not the main *agenda* of the meeting. Further, from the evidence of the defendant's witnesses during the trial it has been clearly established that the defendant company did not have a strict protocol with regards to the issuance of director's resolution and all the meetings and notice were not in compliance with the Malaysia Companies Act.

[36] The plaintiff submits that since the defendant company had very easy, casual and did not have strict procedures in relation to the signing and issuance of the director's resolution, the issuance of the company notice resolution with regards to IRB visit on 12 May 2012 was an afterthought and the court should infer adverse inference against the defendant company.

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[37] The plaintiff submits that pursuant to the plaintiff's resignation on 31 December 2006 (exh P1, p 6 of bundle B), the plaintiff had transferred all his shares and relinquished all his rights and responsibilities as the defendant company's director.

[38] The plaintiff further submits that after the plaintiff's resignation, the plaintiff did not at any material time consent to be reappointed as the director and shareholder of the defendant company.

[39] Further the plaintiff had vide his solicitor's letter dated 30 May 2012 issued notice to the defendant company to stop all the wrongful acts and conducts' purportedly carried out on behalf of the plaintiff (p 115A of bundle B).

[40] Both the defendant's witnesses testified that after the meeting with the plaintiff on 12 May 2012 and on the receipt of the letter dated 30 May 2012, the defendant company had conducted an internal investigation to verify the complaints from the plaintiff.

[41] The said internal investigation purportedly carried out by the defendant company is unacceptable and unreasonable. All that the defendant's internal investigation did was to merely compare the signatures of the plaintiff with several other documents during his directorship in the defendant company and based of the comparison of the said signatures the defendant decided that the signatures were similar as such no forgery. Further, the plaintiff contends that this is an afterthought in attempting to cover the misconducts and wrongful acts of the defendant company.

[42] The plaintiff further refers to the following documents respectively carrying the purported signatures of the plaintiff:

(a) Form 32A

The plaintiff contends that the plaintiff had no knowledge with regards to the transfer of shares as stated in exhs P4A, P4B, P4C and P4D amounting to 905,644. The plaintiff contends that in order to obtain the abovesaid shares the plaintiff had to purchase them for RM905,644 in which the plaintiff denies buying the said shares for RM905,644 and paying such a huge sum to the defendant company.

[43] Form 48A:

(a) this s a statutory declaration purportedly sworn by the plaintiff on 10 October 2007, which the plaintiff denies in relation to the re-appointment of the plaintiff as the director of the defendant company; and

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(b) the plaintiff contends that at any material time, the plaintiff did not go to the defendant company in Malacca to sign the said Form 48A or attend to the office of the commissioner of oath in Malacca to swear the contents of the said statutory declaration before the commissioner of oath.

[44] Directors resolutions:

(a) the plaintiff refers to the directors' resolutions at pp 129–191 of bundle C which are directors' resolutions from November 2007–4 May 2012, which are after the purported re-appointment of the plaintiff as director and shareholder of the defendant;

(b) it is the plaintiff's contention that in perusing all the directors' resolutions stated above, most of the resolutions are not signed by all the directors;

(c) the plaintiff refers to exh P11C (p 189 of bundle C) which is a director's resolution in appointing the plaintiff as the sole signatory of the defendant's current account in United Overseas Bank (M) Bhd, which is a very crucial matter and this resolution was signed and approved by LKM and purportedly by the plaintiff only. DW3 who was also a director at the material time was not consulted on the appointment of the plaintiff as the signatory of UOB account;

(d) in perusing all the aforesaid directors' resolutions, all were signed by LKM. The plaintiff refers to the testimony of Dr Benjamin Chan Teck Ming a consultant psychiatrist ('DW1') during the trial and he had stated that LKM suffers from alzheimer's disease since May 2010 and as a consequence, of the disease LKM who had symptoms of forgetfulness, his speech was often meaningless and repetitive and was hardly intelligible. Further DW1 was referred to the directors' resolutions dated 3 May 2011 (p 176 of bundle C) and according to DW1, LKM would be able to sign the said resolution under guidance but would not be able to understand the contents of the documents that he signed;

(e) in this context the plaintiff submits that appointing the plaintiff as a sole signatory of UOB current account is a crucial and very important decision and as such how would it be possible to have LKM to decide and approve on such an important appointment of the plaintiff as sole signatory of UOB account. Even at all LKM was guided, the plaintiff submits that being a class A and G7 contractor the defendant company would not basically allow a person who suffers from alzheimer's disease to make an important decision on the matter of signing cheque where the projects were big and worth of more than RM100m. Further, other than LKM, the only other director of the defendant company at the material time was DW3 but during cross-examination DW3 testified

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that the said resolution was not given to her and she did not know about the said resolution purportedly to appoint the plaintiff as sole signatory of UOB account;

(f) further, the plaintiff submits that DW3 had in cross-examination stated that not all resolutions were signed in the defendant company's premises but there were resolutions sent to DW3's house to be signed and later would be couriered back to the defendant company's secretary. This was not incompliance with the provisions of the Companies Act; and

(g) further, DW3 was also referred to P20 resolution dated 16 May 2012 in which DW2 and DW3 were appointed as the signatory of UOB account but at that material time DW2 had not been appointed as a director of the defendant company. However, DW3 signed the said resolution approving DW2 to be one of the signatories for the UOB account and during cross-examination DW3 agreed that she signed the resolution knowing that DW2 would be the one of the directors of the defendant company later.

[45] Cheques and specimen signature card.

The plaintiff further submits that the plaintiff's subpoena witness PW4 – Mr Sneah Thean Keng the bank manager had tendered during the trial several cheques (exhs P18A, P18B, P18C, P18D, P18E, ID19A, ID19B, ID19C, ID19D, ID19E, ID19F, ID19G, ID19H, ID19I, ID19J, ID19K, ID19L, ID19M, ID19N, ID190 and ID19P) issued by the defendant company and also the specimen signature card (exh P17) in relation to the UOB account in which the plaintiff was alleged to be the sole signatory.

[46] PW4 testifies that upon the receipt of the directors' resolution purportedly that the plaintiff was the signatory of the UOB account, the bank proceeded to issue a separate authorised signature card that is, specimen signature card. Further PW4 also stated that in usual procedure the person named in the resolution need to come and sign the specimen signature card but in the defendant's case since the director LKM was known to the bank the specimen signature card was taken back to be signed (p 94 notes of proceeding). PW4 stated that LKM took the specimen card back and got it signed and the said specimen card was then returned to the bank by LKM.

[47] The plaintiff submits that from the evidence of PW4, it is an established fact that at any material time the plaintiff did not attend to the bank with regards to the UOB opening account and it was LKM who had been dealing with the opening of the UOB account. As such the plaintiff contends that the misconducts alleged against the defendant company at all material times are true and that the plaintiff's contentions that he had no knowledge with regards

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to the opening and operation of the UOB account and the resolution should be taken into account and accepted by this honourable court.

[48] The plaintiff submits that it has been the defendant company's practice that the defendant company does not have a protocol and does not comply with the requirements of the Companies Act in relation to matters pertaining to directors' resolutions arid management of the company. As such due to too many inconsistencies and discrepancies in relation to the management of the defendant company, the plaintiff submits that misconducts and wrongful acts complained by the plaintiff are true.

[49] The plaintiff contends under the Evidence Act, in cases involving forgery, handwriting expert maybe called to analyse and compare the signatures. However, the plaintiff submits that the evidence by a handwriting expert is not conclusive because it is only opinion evidence and it is merely to assist the court to form its own opinion. In our present case there was no requirement to call expert witness because all the evidence adduced by calling the witnesses is sufficient. Almost 100 documents have been tendered before this honourable court to show that the plaintiff was not the signatory of all the alleged documents that is, Forms 32A, Form 48A, director's resolutions, cheques and specimen card from the year 2007–2012.

[50] The plaintiff concludes that based on all the evidence on a balance of probabilities the plaintiff has proved that the signatures are not the plaintiff's signature but it has been copied by the defendant company.

The defendant's submission

[51] The defendant submits that very clearly in this case, the plaintiff had failed to prove his signatures on the alleged documents were forged.

[52] In fact, the plaintiff's purported evidence of forgeries is flimsy and there is no real effort on his part to prove any forgeries, and all that remains is his bare denials that he signed certain documents and his bare allegation of not being at certain places at certain times.

[53] The plaintiff himself was 'unsure' who did it – identity of alleged 'fraudster' unknown:

(a) in order to prove 'forgery' and 'fraud', the plaintiff must be able to identify the person purportedly perpetrating the same and name that very person as a defendant.

However the plaintiff chose to sue the defendant (a company) but the company is an 'artificial person' and is clearly not capable of 'forging' a

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signature, without a real person doing it on its behalf: *Ho Fok v Ann Bee (M) Sdn Bhd* [2002] 5 MLJ 331 (Tab No 2 of DBOA); and

(b) therefore, there is no capability of the defendant company forging any signature unless the plaintiff can prove and identify that a particular person had done it and that it was also done on behalf of the defendant as a company.

[54] The plaintiff himself could not pin-point who did the alleged 'misdeeds' on behalf of the company:

(a) the defendant highlights to this court that the plaintiff admits that 'he has no idea' and has no knowledge at all who did it. Therefore, he cannot identify anyone from the defendant company who purportedly 'did it';

(b) without the identity of the purported 'forger'/'wrongdoer', the plaintiff has proven nothing: *Deepak Jaikishan a/l Jaikishhan Rewachand & Anor v Infrared Sdn Bhd (previously known as Reetaj City Centre Sdn Bhd and formerly known as KFH Reetaj Sdn Bhd) & Anor* [2013] 7 MLJ 437 at pp[a0]497–495 (Tab No 4 of DBOA); and

(c) the plaintiff only held a 'personal belief' without any actual proof of purported 'fraud' by the defendant company. The plaintiff is also unsure of the 'reasons' or 'motive' behind the defendant's purported conduct and, again, he relies on his own 'personal belief'.

[55] There is no calling of any 'handwriting expert' by the plaintiff.

Since the plaintiff's signature by his own admission is 'not too hard to be copied', we submit that it is therefore important for the plaintiff to call a handwriting expert, as no ordinary person will be able to tell the difference.

A plain comparison of the various signatures of the plaintiff in the bundle of documents will show that they look identical and there is no evidence of any forgery based on the 'naked eye' observation. In fact, the plaintiff himself admitted in the in his witness statement that the signatures resemble and/or look like his signature.

The defendant submits that in this case, the absence of a handwriting expert evidence called by the plaintiff nor even any hint of any attempt to have the signature examined by an expert is fatal to the plaintiff's case: *RHB Bank Bhd v Yap Ping Kon & Anor* [2007] 2 MLJ 65 at p 85 (Tab No 6 of DBOA).

[56] The plaintiff has not proven the identity of the purported 'forger' nor the purported 'fact of forgery'. The failure to prove these two points are fatal to the plaintiff's case.

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[57] If the plaintiff cannot even recognise his own undisputed signatures and allege that he is 'not sure' and that 'it doesn't look like' his signature, how can he expect this court to rule on forgery?

[58] The plaintiff's own daughter that is, PW2 confirmed that the plaintiff's signatures from pp 103–114 'look similar' and she 'honestly can't tell' the difference.

[59] The defendant submits that there is simpfy no proof of forgery nor fraud and the plaintiff's bare allegations are insufficient. The plaintiff bears the burden of proof and the plaintiff has clearly failed to discharge this burden.

Ruling of the court

[60] Having carefully perused the evidence adduced and all the documents tendered in court, I find that the plaintiff has failed to discharge his burden to prove that the signatures on the alleged documents were forged on the following grounds:

(a) the plaintiff has failed to prove that the alleged signatures in Form 48A Companies Act Statutory Declaration exh P3 and Form 32A Companies Act (Form of Transfer of Securities) exh P4 A–D were forged for the following reasons:

> (i) a plain comparison of the alleged forged signatures of the plaintiff and his actual signatures in the bundle of documents shows that they look identical.
>
> I agree with learned counsel for the defendant that there is no evidence of any forgery based on the naked eye observation. The plaintiff himself admitted that the alleged signatures look like his and he could not differentiate between the two. Under such circumstances, I am of the considered view that in order to prove that the alleged signatures on the above mentioned documents were forged, the plaintiff is duty bound to call a handwriting expert to give his expert opinion on such matter to assist the court to arrive at the right decision.
>
> Failure to call a handwriting expert to testify is fatal to the plaintiff's case.

(b) the plaintiff himself has failed to prove who from the defendant company had forged his signature in order to defraud him. He says he had no idea and had no knowledge who did it. I find that the plaintiff was merely relying on his personal belief or strong suspicion that someone had forged his signature without actual proof of the purported fraud by the defendant company; and

(c) I also find that the plaintiff's allegations that all his signatures which appeared in all the cheques (P18 A–E) which were payable under the UOB current account were forged was just bare assertions without being

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substantiated with any cogent proof including a handwriting expert's evidence. In fact PW4 Mr Sneah from UOB Bank who was familiar with the plaintiff's signature could not detect any forgeries on the specimen card (P17) and on all the cheques with the plaintiff's signatures.

On the issue whether the defendant did utilise the plaintiff's alleged bumiputra status to obatain the three impuged projects

The plaintiff's submission

[61] The plaintiff submits that in order to maintain the defendant's bumiputra status as class A and G7, it is very important and crucial for the defendant company to have majority number of bumiputra directors and shareholders. To achieve this purpose, the defendant company had purportedly re-appointed the plaintiff on 10 October 2007 without the plaintiff's consent and knowledge and further someone in the defendant's company have been purportedly signing and copying the plaintiff's signature in all relevant documents pertaining to the re-appointment of the plaintiff and subsequently in all the other documents from 10 October 2007 until May 2012 until the discovery of the various misconducts and misrepresentations by the plaintiff and his daughter.

[62] In doing so the defendant company had obtained three government projects as follows:

(a) Ibu Pejabat Polis Daerah (IPD) Kulai – 2009 and the cost of the project was RM119,020,000;

(b) *Cadangan Membina dan menyiapkan sebuah Sekolah Menengah Bertam* – 2010 and the cost of the project was RM23,430,000; and

(c) Proposed Construction and Completion of 22 units of 3 storey shop/office on PT 2192–PT2213–2012 and the cost of the project is RM4,170,000.

The defendant's submission

[63] The defendant submits that the plaintiff's alleged claims do not make sense for the following reasons:

(a) in the first place, if indeed the Prime Minister Department or other third parties are 'defrauded', these third parties should be the correct parties to sue and who would suffer losses and not the plaintiff;

(b) further, the plaintiff cannot rely on the purported 'illegality' of the transaction to claim for a share of 'profits' that is, he himself wish to share and partake in the alleged 'illegality' in those three projects;

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(c) the director of the defendant company, that is, Datuk Fatimah bt Md Deni (DW3) confirmed that no suit was taken against the defendant company by any third parties by reason of the plaintiff's allegations; and

(d) Mr Shawn Lee (DW2), the other director of the company also confirmed that the police did not even visit him for any investigation based on the police report lodged by the plaintiff.

[64] Worse for the plaintiff, the following contemporaneous evidence and documents conclusively show that it is not true that the defendant required the plaintiff's alleged 'bumiputera status' at all for the impugned three projects:

(a) before the plaintiff resigned as a director on 31 February 2006, it can be seen from both the *Pusat Khidmat Kontraktor* Certificates at pp 78–79 bundle B dated 27 June 2005 and 26 May 2006 that the plaintiff's name was set out as 'Pengerusi Eksekutif';

(b) however, after 31 December 2006, none of the *Pusat Khidmat Kontraktor*'s Certificates dated 11 May 2007, 11 May 2009, 24 April 2008, 22 May 2009 and 8 July 2011 respectively at pp 80–85 bundles contained the plaintiff's name and his name was never used by the defendant;

(c) in the *Perakuan Pendaftaran* Certificates issued by CIDB Malaysia at pp 86–87 bundle B, the plaintiff's name was also not utilised and the other bumiputra directors' names of the defendant company were instead utilised;

(d) more importantly, the following cannot be disputed:

(i) for the IPD project, awarded in 30 March 2009:

(A) At pp 5–6 bundle H, (exh 'D-16c'), the undisputed list of the shareholders for the defendant company as at 8 October 2009, the plaintiff was only a minority shareholder with 100,000 shares and even without his participation, the other bumiputra shareholders that is, Jasni bin Abdul Majid (955,644 shares), Ramli bin Abd Rahman (100,000 shares) and Fatimah Bt Md Deni (402,261 shares) totaling 1,457,905 shares far exceeds 50% of the total 2,300,000 shares; and

(B) The defendant submits that in the circumstances there is no need to 'use' the plaintiff's name at all to gain bumiputra status for the defendant company.

(ii) for the SMK Bertam project awarded in 15 November 2010:

(A) As at 15 November 2010, the shares as shown in the transfer forms that is, Form 32As dated 31 May 2011, 31 May 2011 and 28 October 2011 at pp 117–119 bundle C were not yet transferred by Jasni bin Abdul Majid and Ramli bin Abd

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Rahman to the plaintiff. Therefore, the shareholders were still the same as per the list of shareholders as at 30 September 2010 per exh D16(d) that is, even without the plaintiff's, purported 100,000 shares, the other bumiputra shareholders that is, Jasni bin Abdul Majid (955,644 shares), Ramli bin Abd Rahman (100,000 shares) and Fatimah bt Md Deni (402,261 shares) totaling 1,457,905 shares far exceed 50% of the total 2,300,000 shares; and

(B) Once again, the defendant submits that there is no need to use the plaintiff's 'name' at all to gain bumiputra status for the defendant company.

(iii) in respect of the 22 shop/offices Bachang project:

(A) Mr Shawn Lee (DW2) confirmed at Q&A no 54 of his witness statement (DWS-2) that this is not even a government project and therefore, no bumiputra status was necessary.

(B) When the plaintiff was cross-examined, he confirmed when he was shown the relevant building contract letter of award at pp 99–101 bundle B that this project did not require a bumiputra status.

Therefore, the defendant submits that the plaintiff's claims based on the three projects also do not make sense and are completely baseless.

Ruling of the court

[65] Having perused the evidence adduced, I find that the plaintiff has failed to adduce any cogent evidence to prove that the defendant had utilised his name to secure the said three projects.

[66] On the other hand the defendant has adduced convincing evidence that the first two projects that is the IPD project and the SMK Bertam project were procured without the need to use the plaintiff's name to gain the bumiputra status of 51% and the last project which was procured was not a government project.

[67] I therefore find that the plaintiff's allegation that the defendant had used his name to secure the said three government projects is completely baseless and without merit.

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On the issue whether an adverse inference to be invoked against the defendant for not calling Mr Lee Kee Meow (LKM) as its witness

The plaintiff's submission

[68] The plaintiff submits that the defendant had failed to call an important witness that is, the alter ego of the defendant company that is Mr Lee Kee Meow as its witness.

[69] The plaintiff contends that LKM was a very important witness for the defendant's case.

It is the plaintiff's contention that LKM is the only director with long standing compared to DW2 and DW3 and based on the facts of this matter, LKM seemed to have the most exposure to all the dealings of the defendant company. Although the defendant relies on the evidence of DW1 that is, Dr Chan that LKM was not competent to give evidence in court, at least LKM should have attended in court and should have allowed this honourable court to see his condition.

[70] Further, the plaintiff, submits that although Dr Chan testified that LKM was unable to handle things by himself but based on the company's documents and the directors' resolutions LKM had been an active director in the year 2010–2012 and further the evidence of DW3 during trial contradicts with the testimony of DW1.

[71] In relation to the approval of P20 that is, the resolution appointing DW2 and DW3 as the signatories of UOB account, DW3 had a meeting with LKM and DW3 stated that LKM in the discussion approached DW3 with regards to the proposal and DW3 agreed to the said proposal. Further DW3 also testified that on 16 May 2012, LKM was well. LKM was alone with DW3 in the discussion and he was able to discuss. Further, DW3 said that LKM spoke in Malay and also in English and DW3 could understand. DW3 also state that LKM said 'Datuk, we need your signature to smoothen the process of company on administration' (p 258 of note of evidence).

[72] The plaintiff further refers to the testimony of PW4 who testified that in relation to exh P18C, cheque dated 22 March 2012 in the name of LKM was cashed by LKM himself who had walked to the counter and who had been identified through his identify card and had collected the sum of RM100,000 in cash.

[73] By reason of this, the plaintiff submits that Dr Benjamin Chan's report and his testimony in court should be rejected by this honourable court.

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[74] In this context, the plaintiff submits that in failing to call an important witness, adverse inference should be drawn pursuant to s 114(g) of the Evidence Act 1950 that the instruction relating to the re-appointment of the plaintiff as director and giving majority shares to the plaintiff in the defendant company was decided by LKM. LKM who knew the plaintiff very well took advantage of the friendship between the plaintiff and the defendant to do all the misconducts against the plaintiff. If LKM attended court and testified in court the court would have been able to determine that the main culprit in the whole case was LKM. By not calling Mr Lee, s 114(g) should be invoked against the defendant company.

The defendant's submission

[75] The defendant submits that actually, LKM was not relevant to this claim and reference to him does not even assist the plaintiff. LKM was the friend of the plaintiff.

[76] DW1 that is, Dr Benjamin Chan, a psychiatrist of 30 year's experience had produced a medical report at p 77 of bundle B to show that LKM was diagnosed with a form of dementia called 'alzheimer's disease' and his condition 'gradually deteriorated' and his speech is 'hardly intelligible'.

[77] DW1 that is, Dr Benjamin Chan has given very category evidence that LKM is 'certainly not fit to be witness to this court'.

[78] DW1 also explained that although LKM has alzheimer's disease, surprisingly his basic function of daily living are still intact. He is able to walk but he may need to be brought to that place, that is, guided to that place. He has this bad habit of frequently going to the bank and insists on withdrawing money, so he would not be able to count a large sum like this. LKM was not able to manage but would be familiar with the bank. When he just presents a cheque and the people like the bank staff or his driver will help him to get what he wants. But he may not know the whole process. The defendant submits that clearly, LKM cannot be a witness and there is no issue of adverse inference on either party for not calling him.

Ruling of the court

[79] Having heard the submissions by both the parties, I am of the view that LKM, the founder member of the defendant company and a very close family friend of the plaintiff is a material witness who could throw light on the various issues raised before this court. I therefore disagree with the submission of the defendant that the reference to LKM by the plaintiff is a 'red herring'.

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[80] Unfortunately LKM was certified by DW1 Dr Benjamin Chan, a psychiatrist of 30 years experience to be not fit to be a witness in this court because LKM was diagnosed with a form of dementia called 'alzheimer's disease' and his condition gradually deteriorated and his speech is hardly intelligible.

[81] The plaintiff urges the court to reject DW1's evidence as his testimony is inconsistent with the defendant company's documents and directors' resolutions that LKM had been an active director in the year 2010–2012 and the evidence of DW3 that he met Mr Lee Kee Meow on 16 May 2012 and Mr Lee was able to discuss and he was well.

[82] Having carefully considered the evidence adduced through PW3 and DW1 and the relevant documents referred to by the plaintiff, I still find that the testimony of DW1 is reliable and to be accepted by this court for the following reasons:

(a) DW1 Dr Benjamin Chan a psychiatrist of 30 years experience, is an expert in his specialised field;

(b) he is an independent witness so to speak and has no interest in the dispute between the plaintiff and the defendant; and

(c) he has examined the LKM and has diagnosed that LKM has suffered from alzheimer's dementia and certified that LKM was not fit to attend court. There is no reason for me not to believe what he said. Whereas DW3 who told the court that LKM was able to discuss was a lay person. The testimony of an independent expert is to be preferred here to that of a lay person.

In the circumstances, I am of the view that no adverse inference ought to be drawn against the defendant company for not calling LKM as its witness.

Decision

[83] For the above reasons, I find that the plaintiff has failed to prove beyond reasonable doubt that the defendant company had defrauded the plaintiff by forging his signatures in the alleged documents tendered in court and has used his name to procure the said three projects.

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Whether the plaintiff is entitled to claim for (i) 37% of the purported profits from the three projects said to be worth RM146,620,000 and (ii) for damages and reliefs

The plaintiff's submission

[84] The defendant has fraudulently re-appointed the plaintiff after his retirement as a director in Form 48A of the Companies Act Statutory Declaration and by transferring shares amount to 905,844 shares to his name since 2008–2012 in Form 32A of the Companies Act (Form of Transfer of Securities) without his knowledge and consent by forging his signatures in the aforesaid documents. The defendant has purportedly misrepresented and deceived certain authorities such as the Prime Minister's office, Bumiputra Contractors Association as well as class A bumiputra contractor company that the plaintiff was a bumiputra director and had majority bumiputra shareholders.

[85] The defendant had wrongly used the plaintiff's name as director and shareholders to maintain their status as class A bumiputra contractor in obtaining three main projects. The plaintiff therefore claims that he is entitled to 37% from the profit earned in the form of dividends by the defendant from the three said projects carried out by the defendant.

[86] The plaintiff contends that the dividend from the profit gained by the defendant can be calculated as follows:

The plaintiff purportedly owns 905,644 shares in the defendant's company (p 127 of bundle C). Based on the percentage of the shares purportedly owned by the plaintiff, the plaintiff is entitled to 37% of the profits gained by the defendant from the abovesaid projects:

$$\frac{\text{Total number of share owned by all 4 Directors x 100}}{\text{plaintiff purported shares in the company}} = \frac{2{,}450{,}000 \times 100}{905{,}644} = 36.96\% = 37\%$$

[87] The plaintiff contends that the plaintiff's claim for 37% of the profits gained by the defendant company is tantamount to a reasonable and fair amount of dividend to be paid as compensation to the plaintiff.

[88] The plaintiff contends that from the profit gained by the defendant company it is reasonable to expect 5% from the profit of the RM146,620,000

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which amounts to RM7,331,000. As such the dividend for 37% of the purported shareholding owned by the plaintiff from the:

(a) RM7,331,000 would be RM5,424,940;

(b) RM146,620,000 x 5% = RM7,331,000; and

(c) RM7,331,000 x 37% = RM2,712,470.

The defendant's submission

[89] The defendant submits that the plaintiff is not entitled at all to claim the following reliefs:

(a) the plaintiff cannot claim damages since he did not lose anything as the plaintiff claims that it is not his shares in the first place. To obtain a judgment on damages the plaintiff must prove both the fact of damage (harm caused) and damages (quantum of damages). There is simply no proof of any damage or losses suffered by the plaintiff;

(b) neither can the plaintiff claim for any profits since the plaintiff did not consider himself as a shareholder since 2006. Even if the plaintiff were a shareholder, he cannot claim for profit and can only claim for dividends. Even so, it is the collective decision of the shareholders and the court will not interfere: *Re Tong Eng Sdn Bhd (Loh Loon Keng, Petitioner)* [1994] 1 MLJ 451 at pp 456–457; and

(c) the defendant submits that it is incongruent for a party to claim for profit from a purported transaction and at the same time claim that he suffered losses. This is a double jeopardy on the defendant and also blowing hot and cold with reference to the same transaction. The plaintiff's whole claim is confusing, improper and should be disallowed in limine.

[90] The defendant submits that:

(a) prayer (i) is for an order that the plaintiff's name be removed as a director and shareholder. As a director, these had already been done on the plaintiff's request.

As a shareholder, there is no power by the defendant company to remove the plaintiff's name and it also involves the rights of the original shareholders that is, Lee Voon Teck, Jasni bin Abdul Majid and Ramli bin Abd Rahman. These individuals are not made parties to this Suit. To remove the plaintiff's name would mean that these individual are reinstated as shareholders. There is also no concrete evidence that the Form 32A transfers are not genuine nor that Lee Voon Teck, Jasni and Ramli did not sign these Form 32As or did not transact with the plaintiff;

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(b) prayer (ii) for 37% profit is misconceived since the plaintiff also does not recognise himself as a shareholder and hence have no locus to sue for any profits.

The plaintiff also simply claimed the profit based on the sum awarded in each project, which did not make sense as there are costs involved in each project. As admitted by the plaintiff the project may entail a 'loss' instead of 'profit'. The whole basis of the plaintiff's claim for 'profit' is an abuse of process.

(c) as regards prayers (iii), (iv) and (v), these prayers for injunctions cannot be granted when there is nothing proven by the plaintiff.

Moreover prayer (iv) is misconceived when there is no evidence of the defendant company 'using' the plaintiff's name. The plaintiff's name is already removed as a director. As for his shareholding, he has to deal with Lee Voon Teck, Jasni and Ramli as proper parties to the share transfer transactions.

Prayer (iv) is ridiculous as the plaintiff wants to set aside all transactions using his name when his name was not even used. There is also no basis and it is an abuse of process to ask for a such drastic 'prayer'.

Also prayer (v) is designed to 'paralyse' the defendant company and if indeed the plaintiff was serious to do so, he would have applied for an interim injunction pending trial earlier.

As regards prayers (vi) and (vii), these prayers for damages and interest are completely baseless based on the above submission. There is no liability and the 'fact of damage' nor 'loss' are not proven as well.

Ruling of the court

[91] Having considered the respective submissions on the reliefs sought by the plaintiff, I find that the plaintiff is not entitled to any of the reliefs sought for the following reasons:

(a) since the plaintiff himself disclaims and disagrees that he is a shareholder, he cannot claim for any 'profits' that is, 37% profit in the form of dividends made by the defendant company;

(b) the plaintiff cannot claim for any damages because there is no proof of any losses or damage suffered by him;

(c) the plaintiff is not entitled to any injunctive reliefs prayed for in prayers (iii), (iv) and (v) since the plaintiff has failed to prove that the defendant company had fraudulently used his name in any of its business transactions;

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(d) an order for the plaintiff's name to be removed as a director is no longer necessary as his name as a director has been removed by the defendant company; and

(e) as for his shareholding I agree with the submission by the defendant that the plaintiff has to deal with Lee Voon Teck, Jasni and Ramli as proper parties to the share transfer transactions.

[92] For the above reasons, I find that the plaintiff has failed to prove his claim against the defendant and is therefore not entitled to the reliefs sought for in his statement of claim. I therefore dismissed the plaintiff's claim with cost of RM15,000.

Claim dismissed with costs of RM15,000.

Reported by Afiq Mohamad Noor